

COMMITTEE AMENDMENT

[STAFF WORKING DRAFT]

May 14, 2002

Purpose: To revise and update the bill as introduced.

**IN THE COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION**—107TH Cong., 2D Sess.

S. 630, 107TH Congress, 2D Session

MAY 16, 2002

INTENDED to be proposed by Mr. BURNS (for himself and
Mr. WYDEN)

Viz: Strike out all after the enacting clause and insert the
following:

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Controlling the Assault
3 of Non-Solicited Pornography and Marketing Act of
4 2002”, or the “CANSPAM Act of 2002”.

5 **SEC. 2. CONGRESSIONAL FINDINGS AND POLICY.**

6 (a) FINDINGS.—The Congress finds the following:

7 (1) There is a right of free speech on the Inter-
8 net.

9 (2) The Internet has increasingly become a crit-
10 ical mode of global communication and now presents
11 unprecedented opportunities for the development and

1 growth of global commerce and an integrated world-
2 wide economy.

3 (3) In order for global commerce on the Inter-
4 net to reach its full potential, individuals and enti-
5 ties using the Internet and other online services
6 should be prevented from engaging in activities that
7 prevent other users and Internet service providers
8 from having a reasonably predictable, efficient, and
9 economical online experience.

10 (4) Unsolicited commercial electronic mail can
11 be a mechanism through which businesses advertise
12 and attract customers in the online environment.

13 (5) The receipt of unsolicited commercial elec-
14 tronic mail may result in costs to recipients who
15 cannot refuse to accept such mail and who incur
16 costs for the storage of such mail, or for the time
17 spent accessing, reviewing, and discarding such mail,
18 or for both.

19 (6) Unsolicited commercial electronic mail may
20 impose significant monetary costs on providers of
21 Internet access services, businesses, and educational
22 and nonprofit institutions that carry and receive
23 such mail, as there is a finite volume of mail that
24 such providers, businesses, and institutions can han-
25 dle without further investment in infrastructure.

1 (7) Some unsolicited commercial electronic mail
2 contains material that many recipients may consider
3 vulgar or pornographic in nature.

4 (8) While some senders of unsolicited commer-
5 cial electronic mail messages provide simple and reli-
6 able ways for recipients to reject (or “opt-out” of)
7 receipt of unsolicited commercial electronic mail
8 from such senders in the future, other senders pro-
9 vide no such “opt-out” mechanism, or refuse to
10 honor the requests of recipients not to receive elec-
11 tronic mail from such senders in the future, or both.

12 (9) An increasing number of senders of unsolic-
13 ited commercial electronic mail purposefully disguise
14 the source of such mail so as to prevent recipients
15 from responding to such mail quickly and easily.

16 (10) An increasing number of senders of unso-
17 licited commercial electronic mail purposefully in-
18 clude misleading information in the message’s sub-
19 ject lines in order to induce the recipients to view
20 the messages.

21 (11) In legislating against certain abuses on the
22 Internet, Congress should be very careful to avoid
23 infringing in any way upon constitutionally protected
24 rights, including the rights of assembly, free speech,
25 and privacy.

1 (b) CONGRESSIONAL DETERMINATION OF PUBLIC
2 POLICY.—On the basis of the findings in subsection (a),
3 the Congress determines that—

4 (1) there is a substantial government interest in
5 regulation of unsolicited commercial electronic mail;

6 (2) senders of unsolicited commercial electronic
7 mail should not mislead recipients as to the source
8 or content of such mail; and

9 (3) recipients of unsolicited commercial elec-
10 tronic mail have a right to decline to receive addi-
11 tional unsolicited commercial electronic mail from
12 the same source.

13 **SEC. 3. DEFINITIONS.**

14 In this Act:

15 (1) AFFIRMATIVE CONSENT.—The term “af-
16 firmative consent”, when used with respect to a
17 commercial electronic mail message, means that the
18 message is being sent with the express consent, or
19 at the express direction of, the recipient.

20 (2) COMMERCIAL ELECTRONIC MAIL MES-
21 SAGE.—

22 (A) IN GENERAL.—The term “commercial
23 electronic mail message” means any electronic
24 mail message the primary purpose of which is
25 the commercial advertisement or promotion of a

1 commercial product or service (including con-
2 tent on an Internet website operated for a com-
3 mercial purpose).

4 (B) TRANSACTIONAL OR RELATIONSHIP
5 MESSAGES.—The term “commercial electronic
6 mail message” does not include an electronic
7 mail message the primary purpose of which is
8 to facilitate, complete, confirm, or provide or re-
9 quest information concerning—

10 (i) a commercial transaction,

11 (ii) an existing commercial relation-
12 ship, formed with or without an exchange
13 of consideration, involving the ongoing pur-
14 chase or use by the recipient of products or
15 services offered by the sender, or

16 (iii) an existing employment relation-
17 ship,

18 that the recipient has previously agreed to enter
19 into with the sender,

20 (C) REFERENCE TO COMPANY OR
21 WEBSITE.—The inclusion of a reference to a
22 commercial entity or a link to the website of a
23 commercial entity in an electronic mail message
24 does not, by itself, cause such message to be
25 treated as a commercial electronic mail message

1 for purposes of this Act if the contents or cir-
2 cumstances of the message indicate a primary
3 purpose other than commercial advertisement
4 or promotion of a commercial product or serv-
5 ice.

6 (3) COMMISSION.—The term “Commission”
7 means the Federal Trade Commission.

8 (4) DOMAIN NAME.—The term “domain name”
9 means any alphanumeric designation which is reg-
10 istered with or assigned by any domain name reg-
11 istrar, domain name registry, or other domain name
12 registration authority as part of an electronic ad-
13 dress on the Internet.

14 (5) ELECTRONIC MAIL ADDRESS.—The term
15 “electronic mail address” means a destination, com-
16 monly expressed as a string of characters, consisting
17 of a unique user name or mailbox (commonly re-
18 ferred to as the “local part”) and a reference to an
19 Internet domain (commonly referred to as the “do-
20 main part”), to which an electronic mail message
21 can be sent or delivered.

22 (6) ELECTRONIC MAIL MESSAGE.—The term
23 “electronic mail message” means a message sent to
24 an electronic mail address.

1 (7) FTC ACT.—The term “FTC Act” means
2 the Federal Trade Commission Act (15 U.S.C. 41 et
3 seq.).

4 (8) HEADER INFORMATION.—The term “header
5 information” means the source, destination, and
6 routing information attached to the beginning of an
7 electronic mail message, including the originating
8 domain name and originating electronic mail ad-
9 dress.

10 (9) IMPLIED CONSENT.—The term “implied
11 consent”, when used with respect to a commercial
12 electronic mail message, means that—

13 (A) within the 3-year period ending upon
14 receipt of such message, there has been a busi-
15 ness transaction between the sender and the re-
16 cipient (including a transaction involving the
17 provision, free of charge, of information, goods,
18 or services requested by the recipient); and

19 (B) the recipient was, at the time of such
20 transaction or thereafter, provided a clear and
21 conspicuous notice of an opportunity not to re-
22 ceive unsolicited commercial electronic mail
23 messages from the sender and has not exercised
24 such opportunity.

1 (10) INITIATE.—The term “initiate”, when
2 used with respect to a commercial electronic mail
3 message, means to originate such message or to pro-
4 cure the origination of such message, but shall not
5 include actions that constitute routine conveyance of
6 such message.

7 (11) INTERNET.—The term “Internet” has the
8 meaning given that term in the Internet Tax Free-
9 dom Act (47 U.S.C. 151 nt).

10 (12) INTERNET ACCESS SERVICE.—The term
11 “Internet access service” has the meaning given that
12 term in section 231(e)(4) of the Communications
13 Act of 1934 (47 U.S.C. 231(e)(4)).

14 (13) PROTECTED COMPUTER.—The term “pro-
15 tected computer” has the meaning given that term
16 in section 1030(e)(2) of title 18, United States
17 Code.

18 (14) RECIPIENT.—The term “recipient”, when
19 used with respect to a commercial electronic mail
20 message, means an authorized user of the electronic
21 mail address to which the message was sent or deliv-
22 ered. If a recipient of a commercial electronic mail
23 message has 1 or more electronic mail addresses in
24 addition to the address to which the message was
25 sent or delivered, the recipient shall be treated as a

1 separate recipient with respect to each such address.

2 If an electronic mail address is reassigned to a new
3 user, the new user shall not be treated as a recipient
4 of any commercial electronic mail message sent or
5 delivered to that address before it was reassigned.

6 (15) ROUTINE CONVEYANCE.—The term “rou-
7 tine conveyance” means the transmission, routing,
8 relaying, handling, or storing, through an automatic
9 technical process, of an electronic mail message for
10 which another person has provided and selected the
11 recipient addresses.

12 (16) SENDER.—The term “sender”, when used
13 with respect to a commercial electronic mail mes-
14 sage, means a person who initiates such a message
15 and whose product, service, or Internet web site is
16 advertised or promoted by the message.

17 (17) UNSOLICITED COMMERCIAL ELECTRONIC
18 MAIL MESSAGE.—The term “unsolicited commercial
19 electronic mail message” means any commercial
20 electronic mail message that is sent to a recipient
21 without the recipient’s prior affirmative or implied
22 consent.

1 **SEC. 4. CRIMINAL PENALTY FOR UNSOLICITED COMMER-**
2 **CIAL ELECTRONIC MAIL CONTAINING FRAUD-**
3 **ULENT ROUTING INFORMATION.**

4 (a) IN GENERAL.—Chapter 63 of title 18, United
5 States Code, is amended by adding at the end the fol-
6 lowing:

7 **“§ 1348. Unsolicited commercial electronic mail con-**
8 **taining fraudulent transmission informa-**
9 **tion**

10 “(a) IN GENERAL.—Any person who initiates the
11 transmission, to a protected computer in the United
12 States, of an unsolicited commercial electronic mail mes-
13 sage, with knowledge and intent that the message contains
14 or is accompanied by header information that is materially
15 false or materially misleading shall be fined or imprisoned
16 for not more than 1 year, or both, under this title. For
17 purposes of this subsection, header information that in-
18 cludes an originating electronic mail address the use of
19 which in connection with the message was not authorized
20 by the legitimate holder of the address, or access to which
21 was obtained by means of false or fraudulent pretense or
22 representations, shall be considered materially misleading.

23 “(b) DEFINITIONS.—Any term used in subsection (a)
24 that is defined in section 3 of the CAN SPAM Act of 2002
25 has the meaning giving it in that section.”.

1 (b) CONFORMING AMENDMENT.—The chapter anal-
2 ysis for chapter 63 of title 18, United States Code, is
3 amended by adding at the end the following:

“1348. Unsolicited commercial electronic mail containing fraudulent routing infor-
mation”.

4 **SEC. 5. OTHER PROTECTIONS AGAINST UNSOLICITED COM-**
5 **MERCIAL ELECTRONIC MAIL.**

6 (a) REQUIREMENTS FOR TRANSMISSION OF MES-
7 SAGES.—

8 (1) PROHIBITION OF FALSE OR MISLEADING
9 TRANSMISSION INFORMATION.—It is unlawful for
10 any person to initiate the transmission, to a pro-
11 tected computer, of a commercial electronic mail
12 message that contains, or is accompanied by, header
13 information that is materially or intentionally false
14 or materially or intentionally misleading. For pur-
15 poses of this paragraph, header information that in-
16 cludes an originating electronic mail address the use
17 of which in connection with the message was not au-
18 thorized by the legitimate holder of the address, or
19 access to which was obtained by means of false or
20 fraudulent pretense or representations, shall be con-
21 sidered materially misleading.

22 (2) PROHIBITION OF DECEPTIVE SUBJECT
23 HEADINGS.—It is unlawful for any person to initiate
24 the transmission to a protected computer of a com-

1 mercial electronic mail message with a subject head-
2 ing that such person knows would be likely to mis-
3 lead a recipient, acting reasonably under the cir-
4 cumstances, about a material fact regarding the con-
5 tents or subject matter of the message.

6 (3) INCLUSION OF RETURN ADDRESS OR COM-
7 PARABLE MECHANISM IN UNSOLICITED COMMERCIAL
8 ELECTRONIC MAIL.—

9 (A) IN GENERAL.—It is unlawful for any
10 person to initiate the transmission to a pro-
11 tected computer of an unsolicited commercial
12 electronic mail message that does not contain a
13 functioning return electronic mail address or
14 other Internet-based mechanism, clearly and
15 conspicuously displayed, that—

16 (i) a recipient may use to submit, in
17 a manner specified by the sender, a reply
18 electronic mail message or other form of
19 Internet-based communication requesting
20 not to receive any future unsolicited com-
21 mercial electronic mail messages from that
22 sender at the electronic mail address where
23 the message was received; and

24 (ii) remains capable of receiving such
25 messages or communications for no less

1 than 30 days after the transmission of the
2 original message..

3 (B) MORE DETAILED REQUESTS POS-
4 SIBLE.—Nothing in subparagraph (A) prohibits
5 the sender of a commercial electronic mail mes-
6 sage from, in addition to permitting a recipient
7 to submit a request described in subparagraph
8 (A)(i), providing the recipient the option of sub-
9 mitting more detailed requests concerning the
10 types of commercial electronic mail messages
11 that the recipient does or does not wish to re-
12 ceive in the future from the sender or from
13 some or all affiliates of the sender.

14 (C) TEMPORARY INABILITY TO RECEIVE
15 MESSAGES.—A return electronic mail address
16 or other mechanism does not fail to satisfy the
17 requirements of subparagraph (A) if it is unex-
18 pectedly and temporarily unable to receive mes-
19 sages due to technical or capacity problems, if
20 the problem with receiving messages is cor-
21 rected within a reasonable time period.

22 (4) PROHIBITION OF TRANSMISSION OF UNSO-
23 LICITED COMMERCIAL ELECTRONIC MAIL AFTER OB-
24 JECTION.—If a recipient makes a request to a send-
25 er, using a mechanism provided pursuant to para-

1 graph (3), not to receive some or any unsolicited
2 commercial electronic mail messages from such sender,
3 then it is unlawful—

4 (A) for the sender to initiate the transmission
5 to the recipient, more than 10 days
6 after the receipt of such request, of an unsolicited
7 commercial electronic mail message that
8 falls within the scope of the request;

9 (B) for any person acting on behalf of the
10 sender to initiate the transmission to the recipient,
11 more than 10 days after the receipt of such
12 request, of an unsolicited commercial electronic
13 mail message that such person knows or consciously
14 avoids knowing falls within the scope of
15 the request; or

16 (C) for any person acting on behalf of the
17 sender to assist in initiating the transmission to
18 the recipient, through the provision or selection
19 of addresses to which the message will be sent,
20 of an unsolicited commercial electronic mail
21 message that the person knows, or consciously
22 avoids knowing, would violate subparagraph (A)
23 or (B).

24 (5) INCLUSION OF IDENTIFIER, OPT-OUT, AND
25 PHYSICAL ADDRESS IN UNSOLICITED COMMERCIAL

1 ELECTRONIC MAIL.—It is unlawful for any person to
2 initiate the transmission of any unsolicited commer-
3 cial electronic mail message to a protected computer
4 unless the message provides—

5 (A) clear and conspicuous identification
6 that the message is an advertisement or solici-
7 tation;

8 (B) clear and conspicuous notice of the op-
9 portunity under paragraph (3) to decline to re-
10 ceive further unsolicited commercial electronic
11 mail messages from the sender; and

12 (C) a valid physical postal address of the
13 sender.

14 (b) AFFIRMATIVE DEFENSE.—A person shall not be
15 found to have violated paragraph (2), (3), (4), or (5) of
16 subsection (a) if—

17 (1) that person has established and imple-
18 mented, with due care, reasonable practices and pro-
19 cedures to effectively prevent violations of this sec-
20 tion; and

21 (2) the violation of this section occurred despite
22 good faith efforts to maintain compliance with such
23 practices and procedures.

1 **SEC. 6. ENFORCEMENT BY FEDERAL TRADE COMMISSION.**

2 (a) VIOLATION IS UNFAIR OR DECEPTIVE ACT OR
3 PRACTICE.—Except as provided in subsection (b), this Act
4 shall be enforced by the Commission as if the violation
5 of this Act were an unfair or deceptive act or practice pro-
6 scribed under section 18(a)(1)(B) of the Federal Trade
7 Commission Act (15 U.S.C. 57a(a)(1)(B)).

8 (b) ENFORCEMENT BY CERTAIN OTHER AGEN-
9 CIES.—Compliance with this Act shall be enforced—

10 (1) under section 8 of the Federal Deposit In-
11 surance Act (12 U.S.C. 1818), in the case of—

12 (A) national banks, and Federal branches
13 and Federal agencies of foreign banks, and any
14 subsidiaries of such entities (except brokers,
15 dealers, persons providing insurance, invest-
16 ment companies, and investment advisers), by
17 the Office of the Comptroller of the Currency;

18 (B) member banks of the Federal Reserve
19 System (other than national banks), branches
20 and agencies of foreign banks (other than Fed-
21 eral branches, Federal agencies, and insured
22 State branches of foreign banks), commercial
23 lending companies owned or controlled by for-
24 eign banks, organizations operating under sec-
25 tion 25 or 25A of the Federal Reserve Act (12
26 U.S.C. 601 and 611), and bank holding compa-

1 nies and their nonbank subsidiaries or affiliates
2 (except brokers, dealers, persons providing in-
3 surance, investment companies, and investment
4 advisers), by the Board;

5 (C) banks insured by the Federal Deposit
6 Insurance Corporation (other than members of
7 the Federal Reserve System) insured State
8 branches of foreign banks, and any subsidiaries
9 of such entities (except brokers, dealers, per-
10 sons providing insurance, investment compa-
11 nies, and investment advisers), by the Board of
12 Directors of the Federal Deposit Insurance Cor-
13 poration; and

14 (D) savings associations the deposits of
15 which are insured by the Federal Deposit In-
16 surance Corporation, and any subsidiaries of
17 such savings associations (except brokers, deal-
18 ers, persons providing insurance, investment
19 companies, and investment advisers), by the Di-
20 rector of the Office of Thrift Supervision;

21 (2) under the Federal Credit Union Act (12
22 U.S.C. 1751 et seq.) by the Board of the National
23 Credit Union Administration with respect to any
24 Federally insured credit union, and any subsidiaries
25 of such a credit union;

1 (3) under the Securities Exchange Act of 1934
2 (15 U.S.C. 78a et seq.) by the Securities and Ex-
3 change Commission with respect to any broker or
4 dealer;

5 (4) under the Investment Company Act of 1940
6 (15 U.S.C. 80a-1 et seq.) by the Securities and Ex-
7 change Commission with respect to investment com-
8 panies;

9 (5) under the Investment Advisers Act of 1940
10 (15 U.S.C. 80b-1 et seq.) by the Securities and Ex-
11 change Commission with respect to investment ad-
12 visers registered under that Act;

13 (6) under State insurance law in the case of
14 any person engaged in providing insurance, by the
15 applicable State insurance authority of the State in
16 which the person is domiciled, subject to section 104
17 of the Gramm-Bliley-Leach Act (15 U.S.C. 6701);

18 (7) under part A of subtitle VII of title 49,
19 United States Code, by the Secretary of Transpor-
20 tation with respect to any air carrier or foreign air
21 carrier subject to that part;

22 (8) under the Packers and Stockyards Act,
23 1921 (7 U.S.C. 181 et seq.) (except as provided in
24 section 406 of that Act (7 U.S.C. 226, 227)), by the

1 Secretary of Agriculture with respect to any activi-
2 ties subject to that Act;

3 (9) under the Farm Credit Act of 1971 (12
4 U.S.C. 2001 et seq.) by the Farm Credit Adminis-
5 tration with respect to any Federal land bank, Fed-
6 eral land bank association, Federal intermediate
7 credit bank, or production credit association; and

8 (10) under the Communications Act of 1934
9 (47 U.S.C. 151 et seq.) by the Federal Communica-
10 tions Commission with respect to any person subject
11 to the provisions of that Act.

12 (c) EXERCISE OF CERTAIN POWERS.—For the pur-
13 pose of the exercise by any agency referred to in sub-
14 section (b) of its powers under any Act referred to in that
15 subsection, a violation of this Act is deemed to be a viola-
16 tion of a requirement imposed under that Act. In addition
17 to its powers under any provision of law specifically re-
18 ferred to in subsection (b), each of the agencies referred
19 to in that subsection may exercise, for the purpose of en-
20 forcing compliance with any requirement imposed under
21 this Act, any other authority conferred on it by law.

22 (d) ACTIONS BY THE COMMISSION.—The Commis-
23 sion shall prevent any person from violating this Act in
24 the same manner, by the same means, and with the same
25 jurisdiction, powers, and duties as though all applicable

1 terms and provisions of the Federal Trade Commission
2 Act (15 U.S.C. 41 et seq.) were incorporated into and
3 made a part of this Act. Any entity that violates any provi-
4 sion of that subtitle is subject to the penalties and entitled
5 to the privileges and immunities provided in the Federal
6 Trade Commission Act in the same manner, by the same
7 means, and with the same jurisdiction, power, and duties
8 as though all applicable terms and provisions of the Fed-
9 eral Trade Commission Act were incorporated into and
10 made a part of that subtitle.

11 (e) ENFORCEMENT BY STATES.—

12 (1) CIVIL ACTION.—In any case in which the
13 attorney general of a State has reason to believe
14 that an interest of the residents of that State has
15 been or is threatened or adversely affected by any
16 person engaging in a practice that violates section 5
17 of this Act, the State, as *parens patriae*, may bring
18 a civil action on behalf of the residents of the State
19 in a district court of the United States of appro-
20 priate jurisdiction or in any other court of com-
21 petent jurisdiction—

22 (A) to enjoin that practice; or

23 (B) to obtain damages on behalf of resi-
24 dents of the State, in an amount equal to the
25 greater of—

- 1 (i) the actual monetary loss suffered
2 by such residents; or
3 (ii) the amount determined under
4 paragraph (2).

5 (2) STATUTORY DAMAGES.—

6 (A) IN GENERAL.—For purposes of para-
7 graph (1)(B)(ii), the amount determined under
8 this paragraph is the amount calculated by mul-
9 tiplying the number of willful, knowing, or neg-
10 ligent violations by an amount, in the discretion
11 of the court, of up to \$10 (with each separately
12 addressed unlawful message received by such
13 residents treated as a separate violation). In de-
14 termining the per-violation penalty under this
15 subparagraph, the court shall take into account
16 the degree of culpability, any history of prior
17 such conduct, ability to pay, the extent of eco-
18 nomic gain resulting from the violation, and
19 such other matters as justice may require.

20 (B) LIMITATION.—For any violation of
21 paragraph (2), (3), (4), or (5) of section 5(a),
22 the amount determined under subparagraph (A)
23 may not exceed \$500,000, except that if the
24 court finds that the defendant committed the
25 violation willfully and knowingly, the court may

1 increase the limitation established by this para-
2 graph from \$500,000 to an amount not to ex-
3 ceed \$1,500,000.

4 (3) ATTORNEY FEES.—In the case of any suc-
5 cessful action under paragraph (1), the State shall
6 be awarded the costs of the action and reasonable
7 attorney fees as determined by the court.

8 (4) NOTICE.—

9 (A) PRE-FILING.—Before filing an action
10 under paragraph (1), an attorney general shall
11 provide to the Commission—

12 (i) written notice of that action; and
13 (ii) a copy of the complaint for that
14 action.

15 (B) CONTEMPORANEOUS.—If an attorney
16 general determines that it is not feasible to pro-
17 vide the notice required by subparagraph (A)
18 before filing the action, the notice and a copy
19 of the complaint shall be provided to the Com-
20 mission when the action is filed.

21 (5) INTERVENTION.—If the Commission re-
22 ceives notice under paragraph (4), it—

23 (A) may intervene in the action that is the
24 subject of the notice; and

25 (B) has the right—

1 (i) to be heard with respect to any
2 matter that arises in that action; and

3 (ii) to file a petition for appeal.

4 (6) CONSTRUCTION.—For purposes of bringing
5 any civil action under paragraph (1), nothing in this
6 Act shall be construed to prevent an attorney gen-
7 eral of a State from exercising the powers conferred
8 on the attorney general by the laws of that State
9 to—

10 (A) conduct investigations;

11 (B) administer oaths or affirmations; or

12 (C) compel the attendance of witnesses or
13 the production of documentary and other evi-
14 dence.

15 (7) VENUE; SERVICE OF PROCESS.—

16 (A) VENUE.—Any action brought under
17 paragraph (1) may be brought in the district
18 court of the United States that meets applicable
19 requirements relating to venue under section
20 1391 of title 28, United States Code.

21 (B) SERVICE OF PROCESS.—In an action
22 brought under paragraph (1), process may be
23 served in any district in which the defendant—

24 (i) is an inhabitant; or

1 (ii) maintains a physical place of busi-
2 ness.

3 (8) LIMITATION ON STATE ACTION WHILE FED-
4 ERAL ACTION IS PENDING.—If the Commission or
5 other appropriate Federal agency under subsection
6 (b) has instituted a civil action or an administrative
7 action for violation of this Act, no State attorney
8 general may bring an action under this subsection
9 during the pendency of that action against any de-
10 fendant named in the complaint of the Commission
11 or the other agency for any violation of this Act al-
12 leged in the complaint.

13 (f) ACTION BY PROVIDER OF INTERNET ACCESS
14 SERVICE.—

15 (1) ACTION AUTHORIZED.—A provider of Inter-
16 net access service adversely affected by a violation of
17 section 5 may bring a civil action in any district
18 court of the United States with jurisdiction over the
19 defendant, or in any other court of competent juris-
20 diction, to—

21 (A) enjoin further violation by the defend-
22 ant; or

23 (B) recover damages in an amount equal
24 to the greater of—

1 (i) actual monetary loss incurred by
2 the provider of Internet access service as a
3 result of such violation; or

4 (ii) the amount determined under
5 paragraph (2).

6 (2) STATUTORY DAMAGES.—

7 (A) IN GENERAL.—For purposes of para-
8 graph (1)(B)(ii), the amount determined under
9 this paragraph is the amount calculated by mul-
10 tiplying the number of willful, knowing, or neg-
11 ligent violations by an amount, in the discretion
12 of the court, of up to \$10 (with each separately
13 addressed unlawful message received by such
14 residents treated as a separate violation). In de-
15 termining the per-violation penalty under this
16 subparagraph, the court shall take into account
17 the degree of culpability, any history of prior
18 such conduct, ability to pay, the extent of eco-
19 nomic gain resulting from the violation, and
20 such other matters as justice may require.

21 (B) LIMITATION.—For any violation of
22 paragraph (2), (3), (4), or (5) of Section 5(a),
23 the amount determined under subparagraph (A)
24 may not exceed \$500,000, except that if the
25 court finds that the defendant committed the

1 violation willfully and knowingly, the court may
2 increase the limitation established by this para-
3 graph from \$500,000 to an amount not to ex-
4 ceed \$1,500,000.

5 (3) ATTORNEY FEES.—In any action brought
6 pursuant to paragraph (1), the court may, in its dis-
7 cretion, require an undertaking for the payment of
8 the costs of such action, and assess reasonable costs,
9 including reasonable attorneys' fees, against any
10 party.

11 **SEC. 7. EFFECT ON OTHER LAWS.**

12 (a) FEDERAL LAW.—

13 (1) Nothing in this Act shall be construed to
14 impair the enforcement of section 223 or 231 of the
15 Communications Act of 1934 (47 U.S.C. 223 or
16 231, respectively), chapter 71 (relating to obscenity)
17 or 110 (relating to sexual exploitation of children) of
18 title 18, United States Code, or any other Federal
19 criminal statute.

20 (2) Nothing in this Act shall be construed to af-
21 fect in any way the Commission's authority to bring
22 enforcement actions under FTC Act for materially
23 false or deceptive representations in commercial elec-
24 tronic mail messages.

25 (b) STATE LAW.—

1 (1) IN GENERAL.—This Act supersedes any
2 State or local government statute, regulation, or rule
3 regulating the use of electronic mail to send com-
4 mercial messages.

5 (2) EXCEPTIONS.—Except as provided in para-
6 graph (3), this Act does not supersede or pre-
7 empt—

8 (A) State trespass, contract, or tort law or
9 any civil action thereunder; or

10 (B) any provision of Federal, State, or
11 local criminal law or any civil remedy available
12 under such law that relates to acts of computer
13 fraud perpetrated by means of the unauthorized
14 transmission of unsolicited commercial elec-
15 tronic mail messages.

16 (3) LIMITATION ON EXCEPTIONS.—Paragraph
17 (2) does not apply to a State or local government
18 statute, regulation, or rule that treats the mere
19 sending of unsolicited commercial electronic mail in
20 a manner that complies with this Act as sufficient
21 to constitute a violation of such statute, regulation,
22 or rule or to create a cause of action thereunder.

23 (c) NO EFFECT ON POLICIES OF PROVIDERS OF
24 INTERNET ACCESS SERVICE.—Nothing in this Act shall
25 be construed to have any effect on the lawfulness or un-

1 lawfulness, under any other provision of law, of the adop-
2 tion, implementation, or enforcement by a provider of
3 Internet access service of a policy of declining to transmit,
4 route, relay, handle, or store certain types of electronic
5 mail messages.

6 **SEC. 8. STUDY OF EFFECTS OF UNSOLICITED COMMERCIAL**
7 **ELECTRONIC MAIL.**

8 (a) IN GENERAL.—Not later than 24 months after
9 the date of the enactment of this Act, the Commission,
10 in consultation with the Department of Justice and other
11 appropriate agencies, shall submit a report to the Con-
12 gress that provides a detailed analysis of the effectiveness
13 and enforcement of the provisions of this Act and the need
14 (if any) for the Congress to modify such provisions.

15 (b) REQUIRED ANALYSIS.—The Commission shall in-
16 clude in the report required by subsection (a) an analysis
17 of the extent to which technological and marketplace de-
18 velopments, including changes in the nature of the devices
19 through which consumers access their electronic mail mes-
20 sages, may affect the practicality and effectiveness of the
21 provisions of this Act.

22 **SEC. 9 SEPARABILITY.**

23 If any provision of this Act or the application thereof
24 to any person or circumstance is held invalid, the remain-

1 der of this Act and the application of such provision to
2 other persons or circumstances shall not be affected.

3 **SEC. 10. EFFECTIVE DATE.**

4 The provisions of this Act shall take effect 120 days
5 after the date of the enactment of this Act.

